

Arizona Supreme Court
Judicial Ethics Advisory Committee

OPINION 18-03
(Issued June 12, 2018)

**ADORNMENTS ON JUDICIAL ROBES AND “SAFE PLACE” SIGNS AT
COURTHOUSES**

ISSUES

An Arizona court has established a working group to explore the extent to which the needs and concerns of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are being addressed in the child welfare and juvenile justice systems. The working group believes that one barrier to LGBTQ youth seeking services is their reticence to trust those involved in the systems, including attorneys, judges, guardians ad litem, court-appointed special advocates, and probation officers. The working group suggests that trust may be gained by reassuring LGBTQ youth that they are in a safe place and dealing with safe people, which may be facilitated by displaying certain symbols or messages.

A judge inquires whether judicial officers in the juvenile court may wear small rainbow-flag pins (or similar symbols) on their robes and post “safe place” placards on courtroom doors that convey acceptance to LGBTQ youth. In addressing these specific inquiries, the Judicial Ethics Advisory Committee deems it appropriate to discuss more broadly the recurring issue of adornments on judicial robes.

ANSWERS

Judicial robes should be free of adornments.

Courts may display signs stating that harassment, bias, or prejudice on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or affiliation is strictly prohibited. Courts and judicial officers should not, however, single out any particular category of citizens in offering such assurances.

DISCUSSION

I. Applicable Code Provisions

Several provisions of the Arizona Code of Judicial Conduct (“Code”) are relevant to the committee’s analysis, including:

Rule 1.2. Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interest of the judge or others, or allow others to do so.

Rule 2.3. Bias, Prejudice, and Harassment

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.
- (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Rule 2.4. External Influences on Judicial Conduct

- (A) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

II. Analysis

"An independent, fair and impartial judiciary is indispensable to our system of justice." Code, Preamble. Judicial officers must "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary," and they must avoid both impropriety and the appearance of impropriety. Rule 1.2.

A. Judicial Robes

The judicial robe powerfully and unmistakably invokes the prestige of judicial office. Using that prestige to express support for any particular message, organization, cause, or category of citizens necessarily excludes a large universe of equally worthy messages, organizations, causes, and citizens who might feel reassured upon encountering a judge displaying symbols meaningful to them. *See* Rule 2.4, cmt ("An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family.").

In its criminal justice standards, the American Bar Association discusses the symbolism behind the judicial robe, stating:

The black garb reminds all who look at the judge – and it reminds the judge, too – that justice is the prime concern of the court. It also adds dignity to the courtroom. Indeed, the robe emphasizes the democratic ideal of impartial and equal treatment of all persons who come before the court by reminding the judge and those who view the judge in the courtroom that the judge serves as an agent of justice.

ABA Standards for Criminal Justice 6-1.4 (3rd ed. 2000).

Another commentator has observed that, by donning unadorned black robes, judges “make a visual promise that they’re leaving personal idiosyncrasies, prejudices and desires outside the courtroom.” Robin Givhan, *Trial by Attire: Supreme Court Look Should Go with Everything We Believe In*, Washington Post, October 9, 2010.

The bland robes serve as a visual reminder of the high-minded philosophy underpinning our judicial system: Under the law, everyone is equal. Gender, religion, race and economic class don’t matter. . . .

It sends a singularly powerful message: I am here to uphold the law, without prejudice. That message should stand alone. It does not need to be accessorized.

Id.

Research discloses only one published judicial ethics opinion of relevance. See Michigan Judicial Ethics Opinion JI-68. That opinion addressed the propriety of a judge wearing an “AIDS awareness ribbon.” It concluded that judicial officers should not wear symbols on judicial robes that suggest support for or opposition to any political, social, charitable, or civic cause.

Additionally, one state has a rule that specifically requires judges to wear black robes “with no embellishment.” See Florida Rule of Judicial Administration 2.340. In promulgating that rule, the Florida Supreme Court explained that uniformity in judicial attire enhances public trust and confidence and observed that citizens “should not have to question whether equal justice is being dispensed” based on the appearance of a judge’s robe.

Although Arizona has no comparable court rule, the committee reaches the same conclusion under the Code. Promoting confidence in the independence, integrity, and impartiality of the judiciary requires that judicial robes be free of symbols, pins, or messages, instead conveying the singular and uniform message that a judge’s fidelity is to the law and to equal justice for all who come before the court. No matter how worthy the cause suggested by items such as a rainbow pin, domestic violence awareness ribbon, cross, or military veteran’s insignia, the judicial robe should not serve as a platform for conveying messages or for communicating a judge’s personal beliefs or extrajudicial activities.

B. Signs or Symbols in Courthouses

Concerns regarding impartiality and avoiding the appearance of bias likewise control the question about displaying “safe place” signs or symbols in court facilities. Courthouses should be safe venues for everyone, and they should also be perceived in that fashion.

Rule 2.3 prohibits bias, prejudice, and harassment on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. Rule 2.3’s mandate extends to judges, court staff, lawyers, and “others subject to the judge’s direction and control.”

Judges may communicate the judiciary’s commitment to prohibiting bias, prejudice, and harassment by posting signs or placards in courthouses that communicate Rule 2.3’s message. But for the reasons outlined above, signs or placards should not single out a subset of the groups enumerated in Rule 2.3 when offering such assurances.